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CONCORD, N.H.

Honorable Lane Dwinell
Governor of New Hampshire
Concord, New Hampshire

Dear Governor:

You have inquired concerning the authority and manner of removal of a trustee of the Laconia State School. I respectfully advise as follows.

The trustees of the Laconia State School are appointed by the Governor and Council to a term of six years under the authority of Laws 1950, chapter 5, Part 1, section 1. This was the Reorganization Act and in turn amended Revised Laws, chapter 14, section 2. This section contains the specific statement: "Any appointed member . . . may be removed by the governor and council at any time for cause."

Removal for cause is specified in the same Reorganization Act of 1950, Part 25, section 3, and includes removal by the Governor and Council for "malfeasance, misfeasance, or inefficiency in office, or incapacity or unfitness to perform his duties, or for the good of the department, agency or institution to which he is assigned." This removal is on petition to the Governor and Council by either the appointing authority of the official concerned or the Attorney General, and requires a public hearing on such a petition on not less than thirty days' notice.

However, Revised Laws, chapter 26, section 9, provides explicitly for still another form of removal applicable to all state officials appointed by the Governor and Council or

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Honorable Sam Dinnell -- 2.

chosen by the Legislature. This method consists of removal by address and the statute reads as follows:

"9. Removal by Address. All officers appointed by the governor and council, or chosen by the legislature, may be removed by the governor, with consent of the council, upon address of both houses of the legislature."

I believe from our oral discussions that you wish to know whether the Legislature has any lawful right to petition the Governor and Council for removal of any individual state official and if this is so I believe this statute makes it clear that as to any official appointed by you and the Council or by the Legislature, the Senate and the House may by joint resolution petition the Governor and Council to remove him. I further believe that should the Governor and Council receive such a joint petition they might remove him forthwith without any further notice or hearing, pursuant to the authority of the aforementioned section. I do believe, however, that even after such address, if the Governor and Council desired they might hold a hearing and they would have the right to decline to remove the official for the reason that the phraseology of section 9 is precatory and uses the word "may".

Respectfully,

Louis C. Wyman
Attorney General

W/d